



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 17 2013

UNITED PARCEL SERVICE

Mr. David Parr
General Manager
Cell Pak, LLC
645 McEntire Lane
Decatur, Alabama 35603

Re: Notice of Warning for Sale and Distribution of an Unregistered Pesticide
Cell Pak, LLC
Case File No. FIFRA-04-2013-3253

Dear Mr. Parr:

The U.S. Environmental Protection Agency finds Cell Pak, LLC in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and is issuing this Notice of Warning (NOW) pursuant to FIFRA Section 9(c)(3), 7 U.S.C. § 136g(c)(3). On or about September 26, 2011, and October 3, 2011, an inspector authorized by the EPA conducted an inspection at the facility located at 645 McEntire Lane, Decatur, Alabama, to determine compliance with FIFRA and the regulations promulgated thereunder. The inspection revealed that Cell Pak, LLC, sold and distributed Supreme Plus Cellulose Insulation.

At the time of the aforementioned inspections, Supreme Plus Cellulose Insulation was advertised with claims such as "insulation protected from infestation by cockroaches, ants, earwigs, silverfish, crickets, darkling beetles, sow bugs, centipedes, millipedes, and book lice." The insecticide Zone Defense, EPA Registration Number 44757-3, which is registered by the EPA for treatment of many areas of the home, including cellulose insulation, was added to this product to convey the insecticidal properties to the insulation.

Cell Pak, LLC represents that Supreme Plus Cellulose Insulation qualifies for the "Treated Article Exemption" of FIFRA, 40 C.F.R. § 152.25(a). In order to qualify for this exemption of all requirements of FIFRA, the product must be both treated with a pesticide registered for that use, and limit the protection to the article itself. Supreme Plus Cellulose Insulation meets the first part by incorporating a pesticide registered for use in cellulose insulation to control pests, but fails to meet the second requirement in that the insulation claims to be protected against insects which do not actually harm insulation. The only reason to treat insulation to protect against these insects is to actually provide pest control to the structure where the insulation is installed, which is not an allowable use of this exemption.

Because Supreme Plus Cellulose Insulation does not qualify for the Treated Article Exemption, it is fully regulated as a pesticide under FIFRA. According to FIFRA Section 2(u), a pesticide is defined as "any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest." At the time of the inspection, Supreme Plus Cellulose Insulation was not registered as a pesticide with the EPA. As set forth in FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), it is unlawful to distribute or sell any pesticide that is not registered under Section 3 of FIFRA.

The EPA has determined this NOW is the appropriate enforcement response for the violation of FIFRA at this time. To conclude this matter, within 10 calendar days of the receipt of this NOW, you must submit a signed statement indicating that compliance with FIFRA has been achieved and identifying the actions taken to achieve compliance. If this information is not submitted and/or the violation is not corrected, a civil penalty of not more than \$7,500 per offense may be assessed.

Since your company may be classified as a small business, you may want to review the Information Sheet "U.S. EPA Small Business Resources," which can be found on the internet at: www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf. This document will provide you with information regarding compliance and rights you may be entitled to under the Small Business Regulatory Enforcement Fairness Act.

If you have any questions or would like a copy of the Information Sheet, please contact Molly Miller of the EPA Region 4 staff at (404) 562-9684.

Sincerely,



Kimberly L. Bingham
Chief
Pesticides Section

cc: Tony Cofer
Alabama Department of Agriculture and Industries
State File: Cell Pak, LLC PEI